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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218109.3

DATE: May 17, 1985

MATTER OF: R.E. White & Associates, Inc.

DIGEST:

Protest is untimely when it is not filed with either contracting agency or GAO within 10 days after basis of protest is known or should have been known.

R.E. White & Associates, Inc. protests an award to IMC Magnetics Corporation under request for quotations (RFQ) No. DLA400-85-Q-3646, issued by the Defense General Supply Center, Richmond, Virginia, for 16 vane axial fans. The agency rejected White's offer in response to the RFQ because the firm refused to agree to perform certain quality assurance tests. White contends that award to IMC was improper because the same quality assurance tests were not imposed on IMC.

We dismiss the protest as untimely.

The Defense General Supply Center issued the solicitation on February 17, 1984, describing the desired parts by manufacturer and manufacturer's part number. Five firms responded to the RFQ, and White's price quotation offering 12 year old unused surplus parts was low. On August 27, the contracting officer provided a proposed quality assurance contract provision to White, stating that because of the age and uncertain history of the surplus fans, the fans could only be accepted under a contract incorporating the provision. White was asked to verify its acceptance of the quality assurance provision by no later than September 7. White responded on September 19 that the proposed contract provision was unreasonable and proposed, instead, simple functional testing of the units in the presence of government representatives. White also contended that the "manufacturer's drawings" specified a different test than the one that the agency proposed (testing with an input power of 575 watts at 95 degrees centigrade rather than, as the manufacturer's drawing provided, with a maximum of 540 watts at 25 degrees).

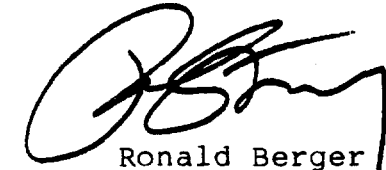
With a letter to White dated October 29, the contracting officer furnished White a copy of the purchase

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specification that included the quality assurance requirements imposed upon the manufacturer of vane axial fans, stating that the tests for the surplus items had been derived from the purchase specification. The letter also addressed each of White's objections and stated that, unless White agreed to accept the quality assurance provision within 10 days, its offer would be rejected and new equipment would be purchased from the manufacturer. White responded by letter of November 16, reiterating its objections to the quality assurance provision and suggesting that the agency ask IMC if it would subject newly-manufactured items to a quality assurance test at 95 degrees. White stated that it was certain that IMC also would decline to perform the test. On January 25, 1985, the contracting officer rejected White's offer because of the company's unwillingness to accept the quality assurance provision, and, on January 30, issued a purchase order to IMC.

White protested to our Office on February 6, 1985, challenging the rejection of its offer because of a refusal to accept the quality assurance provision. We dismissed the protest as untimely, since White had known the basis for the protest in October, more than 3 months before the protest was filed with our Office. White filed this second protest on February 20, 1985, claiming that IMC was not required to undergo the same stringent testing as White and that White first learned of this disparate treatment during a telephone conversation with the contracting officer on February 13, 1985.

Our Bid Protest Regulations generally require protests to be filed within 10 working days after the protester knew or should have known the basis for the protest. 4 C.F.R. § 21.2(a)(2) (1985). It is clear from White's letter to the agency of November 16, discussing the quality assurance test in the manufacturer's purchase specification, that White believed that it was being asked to perform a test which would not be imposed upon the manufacturer. Since we did not receive White's protest on this issue until 3 months later, on February 20, 1985, it is untimely and will not be considered.


Ronald Berger
Deputy Associate
General Counsel